



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/170137

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 22, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization request for occupational therapy (OT).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mary Chucka, OTR

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.

2. The petitioner is a seven year old who is diagnosed with an autism spectrum disorder. He receives Medicaid coverage.
3. On April 20, 2015 the petitioner's provider submitted a medical prior authorization request for Occupational Therapy (OT) services. This request was approved, and the petitioner received 16 OT sessions from April 8, 2015 through August 7, 2015.
4. On August 12, 2015 the petitioner's provider submitted another prior authorization request for OT services. The provider requested 26 units of Therapeutic Activities costing \$1,534 and 26 units of neuromuscular reeducation costing \$3,068 for a total cost of \$4,602.
5. The petitioner receives 20 minutes of occupational therapy services per week through his school's individualized education plan (IEP).
6. On October 12, 2015 the Department sent the petitioner a notice stating that the prior authorization request had been denied.
7. On November 16, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

OT is covered by MA under Wis. Adm. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

In reviewing a PA request the Department must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability; ...
 3. Is appropriate with regard to generally accepted standards of medical practice; ...
 6. Is not duplicative with respect to other services being provided to the recipient;
 8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and ...
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The department has long held the position that school therapy and private therapy basically address the same deficits and use the same techniques. Thus for private therapy to be approved when comprehensive school therapy is in place, there must be some deficit or deficits that the school therapist cannot address.

The Department has further ruled in *Final Decision No. MPA-65/111878* that sensory integration does not effectively treat autism, and therefore occupational therapy relying on those techniques must be denied for autistic children.

In this case the Department cites several reasons for their denial. First, the Department argues that the petitioner does not need a skilled level of therapy. The Department goes through some of the listed goals, and argues that these goals can be accomplished at home by the parent without skilled intervention. The Department finally mentions that the provider stated that the petitioner has difficulties in self-regulation, requires improved sensory tolerance, and needs skilled OT to assess and modify strategies to reduce frustration and self-escalating behaviors. They then note that Medicaid does not cover sensory integration for individuals with autism.

The petitioner's provider and mother argue that the petitioner needs skilled OT services. They argue that the petitioner has difficulty functioning when there is a lot of sensory information. They used the example of squeezing toothpaste onto the toothbrush. The petitioner cannot squeeze the right amount of toothpaste onto the toothbrush. OT can provide the right challenge for the petitioner. OT is able to use calming, strengthening of motor skills, and sequencing steps to help the petitioner learn to squeeze the appropriate amount of toothpaste onto the toothbrush. The petitioner's mother has testified that since the petitioner has not had this skilled OT therapy, he has regressed. Although I find the petitioner's mother and provider credible, I find that the Department's denial was nonetheless correct.

The first issue that I have is that there seems to be a component of sensory integration therapy. There was testimony regarding working with the petitioner to refine his touch skills and to locate objects by touch. The idea was for him to be able to discern the objects without using his visual skills and then to learn the appropriate amount of pressure to apply to each object. This was not described in the PA request, but appears to be sensory integration therapy, which is not covered.

The second issue that I have is that there is little to no mention of the petitioner's IEP, through which, he receives OT services. My review of the IEP shows the school therapy addresses the same deficits using the same or similar techniques as the private therapy. If this is the case, then private OT services are not covered through Medicaid. Many times people argue that the quality of the private OT services is much better than the school services. MA only provides the most cost effective and basic medical care. If the school is already addressing the concerns, MA cannot pay for outside services to address those same concerns in the same way.

Despite these two concerns, I note that at a minimum some of the proposed therapy does not appear to be sensory integration therapy. I further note that the petitioner only receives 20 minutes of school therapy each week. I also disagree with the Department's view that there is no need for skilled therapy to address these concerns. However, at the present time with my two concerns listed above, I must agree with the Department's denial. I encourage the petitioner's provider to submit a new prior authorization request showing the regression addressed during the hearing, showing how this is NOT sensory integration therapy, and showing a coordination of services between school and home with different therapy goals. If the provider can demonstrate this, it is possible that a new prior authorization request should be approved.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's prior authorization request for occupational therapy (OT).

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

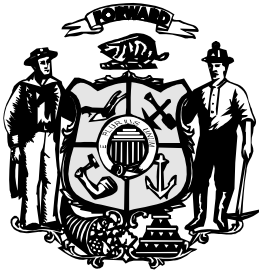
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of February, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 9, 2016.

Division of Health Care Access and Accountability